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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,868	12/08/2000	Jonathan L. Joseph	INQ-001	3141
959	7590	04/06/2004	EXAMINER	
LAHIVE & COCKFIELD, LLP.			CHANG, ERIC	
28 STATE STREET			ART UNIT	
BOSTON, MA 02109			PAPER NUMBER	

2116

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DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/733,868

Applicant(s)

JOSEPH ET AL.

Examiner

Eric Chang

Art Unit

2116

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 30-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 30-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Claims 1-27 and 30-46 are pending.

Allowable Subject Matter

2. The indicated allowability of claims 4-10, 12-13, 17-23, 25-26, 30-36 and 38-39 is withdrawn in view of the newly discovered reference(s) to U.S. Patent 6,477,642 to Lupo. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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4. Claims 1-5, 10-18, 23-27, 30-31 and 36-46 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent 6,477,642 to Lupo.

5. As to claims 1-5, 14-18, 27 and 30-31, Lupo discloses a method for displaying selected content to a user during the POST, said method comprising:

[a] initiating said POST [col. 7, lines 44-62];

[b] retrieving selected content from a designated persistent storage medium separate from a storage medium holding a BIOS [col. 8, lines 24-29];

[c] displaying said selected content to said user during the remainder of the POST [col. 8, lines 60-63];

[d] subsequently updating said selected content [col. 9, lines 51-67, and col. 10, lines 1-9]; and

[e] displaying the updated selected content to a user during the next POST, prior to the next loading of an operating system [col. 10, lines 14-23].

Lupo teaches loading content, such as graphics from an initial payload, and displaying said content to a user during the POST process. Lupo also teaches that the initial payload may be stored either in a ROM that also contains the BIOS [FIG. 3, element 175], or alternatively, in a persistent storage such as flash memory other than the ROM that contains the BIOS [FIG. 3, element 152], substantially as claimed. In addition, Lupo teaches a process by which the content is updated by downloading new payloads from the persistent storage device on a remote server [FIG. 3, element 22], and that the update can occur either automatically, in response to a user request [col. 9, lines 59-60].

6. As to claims 10, 23 and 36, Lupo teaches all of the limitations of the claim. In addition, Lupo discloses that the content retrieved and displayed is based on a user profile [col. 8, lines 65-67, and col. 9, lines 1-3], substantially as claimed.

7. As to claims 11-13, 24-26 and 37-39, Lupo teaches replacing the splash screen of an operating system with selected content prior to the loading of the operating system [col. 10, lines 14-23]. Furthermore, Lupo teaches that the user may be queried during the POST [col. 3, lines 50-56], and that the splash screen and/or other downloaded content may be modified according to the user profile constructed therefrom [col. 9, lines 51-67].

8. As to claim 40, Lupo teaches the electronic device is a computer system [col. 2, lines 38-45].

9. As to claims 41-46, Lupo teaches a method for displaying selected content to a user during the POST process, comprising retrieving content from a designated persistent storage medium separate from a storage medium holding a BIOS, displaying said selected content to said user during the remainder of the POST, subsequently updating said selected content, and displaying the updated selected content to a user during the next POST, prior to the next loading of an operating system, substantially as claimed. Because Lupo teaches the method, Lupo teaches a medium holding executable steps for implementing such a method. Furthermore, Lupo teaches the electronic device is a computer system [col. 2, lines 38-45].

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6-9, 19-22 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,477,642 to Lupo.

12. As to claims 6-9, 19-22 and 32-35, Lupo discloses a data loader application that provides traffic control management and other communication facilitation between the server and the end user's system [col. 7, lines 36-50]. It would have been obvious to one of ordinary skill in the art that such management comprises determining available bandwidth and CPU processing availability, in order to facilitate said retrieval of updated content from a remote server, substantially as claimed.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Chang whose telephone number is (703) 305-4612. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Lee can be reached on (703) 305-9717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

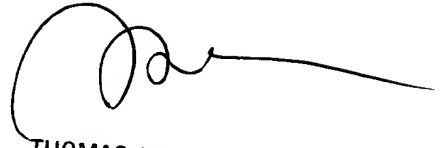
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